



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/900,808	07/06/2001	Franky Lee Shacklee	004578.1132	8614

7590 07/03/2003
Luke K. Pedersen, Esq.
Baker Botts L.L.P.
2001 Ross Avenue, Suite 600
Dallas, TX 75201-2980

EXAMINER

CASTELLANO, STEPHEN J

ART UNIT	PAPER NUMBER
----------	--------------

3727

DATE MAILED: 07/03/2003

18

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/900,808

Applicant(s)

SHACKLEE, FRANKY LEE

Examiner

Stephen J. Castellano

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 24-37 and 43-48 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 24-37 and 43-48 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 17.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Art Unit: 3727

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 24, 30-37, 43 and 44 are rejected under 35 U.S.C. 102(b) as being anticipated by Fischer et al. (Fischer).

Fischer discloses a container comprising a container comprising a storage vessel (tube 2a) with an interior compartment, and an access opening at one end; a removable end cap (hinged lid 6) releasably and mechanically coupled to the storage vessel and operable to close the access opening, a first flange (the outwardly curled end edge of tube 2 as best shown in Fig. 3 and 5) extending from an outer surface of the storage vessel, the first flange being sized to cooperate with a corresponding second flange extending from an exterior surface of the end cap; a generally rectangular first stacking lug (collar 8 including a plate proximal and parallel to the access opening, a plate distal and parallel to the access opening and stacking surfaces 3 and 4) being disposed upon the outer surface and having a generally cylindrical, tubular interior diameter operable to receive the storage vessel therein; and wherein the first flange extends from the outer surface of the storage vessel at a location between the access opening and the stacking lug thereby forming a cylindrical neck between the access opening and the stacking lug.

The first flange extends from the outer surface of the storage vessel at a location between the access opening (the left side of the first flange defines the access opening as shown in Fig. 5 forming the plane of the access opening) and the stacking lug (collar 8), thereby forming a

cylindrical neck (the radial outer surface of the first flange is generally cylindrical) between the access opening and the stacking lug.

The first flange is sized to cooperate with a second flange (that portion of lid 6 which is most closely adjacent to outwardly curled end edge of the storage vessel which is best shown in Fig. 5 as the U-shaped channel holding ring seal 25).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 25, 26, 46 and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer in view of Rocher.

Fischer discloses the invention except for the backing rings which contact the first and second flanges. Rocher teaches backing ring (19) which backs the first flange (12) on the storage vessel (11) and also the second flange (22) on the end cap (16). It would have been obvious to add the backing ring in order to make the sealed closure joint more secure to prevent inadvertent or unauthorized opening of the pressure vessel.

Claims 25 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer in view of Seitz.

Fischer discloses the invention except for the backing ring which contacts the first flanges. Seitz teaches backing ring (14) which backs the first flange (18 and 16) on the storage vessel. Seitz also teaches a backing ring as parts (14 and 16) or 16 by itself which backs the first

flange 18 on the storage vessel. It would have been obvious to add the backing ring in order to reinforce the sealed closure joint.

Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer in view of LaBianca et al. (LaBianca).

Fischer discloses the invention except for the material of the stacking lug and storage vessel is not specified. LaBianca teaches stacking lug and pressure vessel materials made of high density polyethylene (see col. 10, lines 1-4). It would have been obvious to make the stacking lug and pressure vessel of Fischer from high density polyethylene in order to easily form the lug or storage vessel in a single forming operation.

Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer in view of LaBianca and Snyder et al. ('733)(Snyder).

Fischer discloses the invention except for the material of the stacking lug is not specified. LaBianca teaches stacking lug materials made of high density polyethylene (see col. 10, lines 1-4). It would have been obvious to make the stacking lug of Fischer from high density polyethylene in order to easily form the lug or storage vessel in a single forming operation. Snyder teaches a support for a vessel made from rotationally molded cross-linked high density polyethylene. It would have been further obvious to make the stacking lug from rotationally molded cross-linked high density polyethylene in order to provide weatherability, impact resistance and stress cracking resistance.

Claim 45 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer in view of Arnot.

Fischer discloses the invention except for the humidity indicator. Arnot teaches a humidity indicator. It would have been obvious to add a humidity indicator in order to ensure that the interior chamber's humidity conditions are not changing so that the contents do not degrade due to high humidity.

Claims 27 and 48 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicant's arguments filed April 22, 2003 have been fully considered but they are not persuasive.

The first flange extends from the outer surface of the storage vessel at a location between the access opening (the left side of the first flange defines the access opening as shown in Fig. 5 forming the plane of the access opening) and the stacking lug (collar 8), thereby forming a cylindrical neck (the radial outer surface of the first flange is generally cylindrical) between the access opening and the stacking lug. Applicant should particularly state the element of limitation not met by the amended language when rebutting a possible anticipation rejection.

The examiner has further clarified that the first flange is defined by (12) and the second flange is defined by (22) in Rocher. This should alleviate applicant's concerns about reference numerals. Applicant's statements that the clamping ring (19) of Rocher does not support the storage vessel or support any flange and that the clamping ring does not include an opening configured to receive the storage vessel therethrough or receive the end cap therethrough are baseless and conclusionary and are not supported by properly reasoned analysis.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 703-308-1035. The examiner can normally be reached on M-Th 6:30-5.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 703-308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Application/Control Number: 09/900,808

Page 7

Art Unit: 3727

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.


Stephen J. Castellano
Primary Examiner
Art Unit 3727

sjc
July 2, 2003